



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2018-0296]**

**RIN 1625-AA08**

### **Special Local Regulation; North Atlantic Ocean, Ocean City, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard is proposing to establish special local regulations for certain waters of the North Atlantic Ocean. This action is necessary to provide for the safety of life on these navigable waters located at Ocean City, Worcester County, MD, during a high-speed power boat racing event on June 23, 2018, and June 24, 2018. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0296 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On January 30, 2018, the Offshore Powerboat Association of Brick Township, NJ, notified the Coast Guard through submission of a marine event application that this year's Ocean City Grand Prix would be held on a different date this year from that published in the Code of Federal Regulations (CFR) at Table to 33 CFR § 100.501 at (b.)19. The estimated date for this annual event listed in the regulation is either the first or second Saturday or Sunday of May, or the second or third Saturday and Sunday of September. This year, the Ocean City Grand Prix is being held on June 23, 2018, and June 24, 2018. The high-speed power boat racing consist of approximately 40 participating offshore race boats of various classes, 21 to 50 feet in length, operating along a designated, marked racetrack-type course located in the North Atlantic Ocean, at Ocean City, MD. Details of the proposed event were provided to the Coast Guard on

March 12, 2018. Hazards from the power boat racing event include participants operating near a designated navigation channel, as well as injury to persons and damage to property that involve vessel mishaps during high-speed power boat races conducted on navigable waters located near the shoreline. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to operate within certain waters of the North Atlantic Ocean at Ocean City, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on certain waters of North Atlantic Ocean before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

### **III. Discussion of Proposed Rule**

The COTP Maryland-National Capital Region is proposing to establish special local regulations that will be enforced from 9:30 a.m. to 5:30 p.m. on June 23, 2018 and from 9:30 a.m. to 5:30 p.m. on June 24, 2018. The regulated area is a polygon in shape measuring approximately 4,500 yards in length by 1,600 yards in width. The area would cover all navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: commencing at a point near the shoreline at latitude 38°21'42" N., longitude 075°04'11" W., thence east to latitude 38°21'33" N., longitude 075°03'10" W., thence southwest to latitude 38°19'25" N., longitude 075°04'02" W., thence west to the shoreline at latitude 38°19'35" N., longitude 075°05'02" W., at Ocean City, MD.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include "Race Area", "Buffer Zone",

and “Spectator Area”.

The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 a.m. until 5 p.m. high-speed power boat racing event. Under the proposed rule, the COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given. Failure to do so could result in expulsion from the area, citation for failure to comply, or both.

Except for Ocean City Grand Prix participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard patrol commander. Vessel operators would be allowed to request permission to enter and transit through a regulated area by contacting the Coast Guard patrol commander on VHF-FM channel 16. All persons and vessels not registered with the event sponsor as participants or assigned as official patrols are considered spectators. Official Patrols are any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted, spectators would be allowed to enter the spectator area or pass directly through the regulated area as instructed by Coast Guard Patrol Commander and at safe speed and without loitering. All spectator vessels would be required to be anchored or operate at a No Wake Speed within the designated spectator area. Official

patrol vessels will direct spectator vessels to the spectator area. Only participant vessels and official patrol vessels would be allowed to enter the race area.

The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration and location of the regulated area. Vessel traffic would be able to safely transit around this regulated area, which would impact a small designated area of the North Atlantic Ocean for 16 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the COTP Coast Guard Patrol Commander deems it

safe to do so.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 16 hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Memorandum for Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will



consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.501T05-0296 to read as follows:

### § 100.501T05-0296 Special Local Regulation; North Atlantic Ocean, Ocean City, MD.

- (a) Definitions. As used in this section:

Buffer Zone is a neutral area that surrounds the perimeter of the Race Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a Race Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participants means all persons and vessels registered with the event sponsor as participating in the Ocean City Grand Prix event or otherwise designated by event sponsor as having a function tied to the event.

Race Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectators means all persons and vessels not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this section.

(b) Locations. All coordinates reference Datum NAD 1983. (1) Regulated area. All navigable waters of the North Atlantic Ocean, within an area bounded by the following coordinates: commencing at a point near the shoreline at position latitude 38°21'42" N., longitude 075°04'11" W.; thence east to latitude 38°21'33" N., longitude 075°03'10" W.; thence southwest to latitude 38°19'25" N., longitude 075°04'02" W.; thence west to the shoreline at latitude 38°19'35" N., longitude 075°05'02" W., at Ocean City, MD. The following locations are within the regulated area:

(2) Race Area. The race area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19'46.85" N., longitude 075°04'43.28" W., thence east to latitude 38°19'44.23" N., longitude 075°04'29.89" W., thence north and parallel to Ocean City,

MD shoreline to latitude 38°21'23.24" N., longitude 075°03'48.87" W., thence west to latitude 38°21'25.12" N., longitude 075°04'02.45" W.; thence south to the point of origin.

(3) Buffer Zone. The buffer zone is a polygon in shape measuring approximately 500 yards in all directions surrounding the entire race area described in the preceding paragraph of this section. The area is bounded by a line commencing at a point near the shoreline at position latitude 38°21'42" N., longitude 075°04'11" W.; thence east to latitude 38°21'35" N., longitude 075°03'24" W.; thence southwest to latitude 38°19'28" N., longitude 075°04'17" W.; thence west to the shoreline at latitude 38°19'35" N., longitude 075°05'02" W., at Ocean City, MD.

(4) Spectator Area. The designated spectator area is a polygon in shape measuring approximately 3,500 yards in length by 350 yards in width. The area is bounded by a line commencing at position latitude 38°19'40" N., longitude 075°04'12" W., thence east to latitude 38°19'37" N., longitude 075°03'59" W., thence northeast to latitude 38°21'17" N., longitude 075°03'17" W., thence west to latitude 38°21'20" N., longitude 075°03'31" W., thence southwest to point of origin.

(c) Special local regulations: (1) The COTP or Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel designated by event sponsor as having a function tied to the event, at any time

the Coast Guard Patrol Commander deems it necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the start of enforcement are to depart the regulated area.

(3) Spectators shall contact the Coast Guard Patrol Commander to request permission to either enter the spectator area or pass through the regulated area. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, spectators may enter the spectator area or must pass directly through the regulated area as instructed by Coast Guard Patrol Commander and at safe speed and without loitering. All spectator vessels shall be anchored or operate at a No Wake Speed within the designated spectator area. Official patrol vessels will direct spectator vessels to the spectator area.

(4) Only participant vessels and official patrol vessels are allowed to enter the race area.

(5) Persons and vessels desiring to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or Coast Guard Patrol Commander. The Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) to seek permission to transit, moor, or anchor within the regulated area while this section is being enforced.

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band

radio announcing specific event date and times.

(d) Enforcement periods. This section will be enforced from 9:30 a.m. to 5:30 p.m. on June 23, 2018 and from 9:30 a.m. to 5:30 p.m. on June 24, 2018.

Dated: May 15, 2018

Joseph B. Loring,  
Captain, U.S. Coast Guard  
Captain of the Port Maryland-National Capital Region.

[FR Doc. 2018-10730 Filed: 5/18/2018 8:45 am; Publication Date: 5/21/2018]